

APPENDIX C
SAMPLE UNITED STATES DEPARTMENT OF TRANSPORTATION REQUIREMENTS.

DBSC10.1 Definitions. The following definitions shall apply to this Contract:

Government: The United States of America (U.S.).

DOT: The U.S. Department of Transportation, or as the context may require, the U.S. Secretary of Transportation, or other person who may at the time be acting in the capacity of the Secretary or authorized representative or any other person otherwise authorized to perform the functions to be performed hereunder by DOT as that term is used in this Contract.

FTA: Federal Transit Administration.

DBSC10.2 Compliance to Federal, State, Local Laws, Regulations and FTA Directives. In performance of its obligations pursuant to this Contract, the Contractor agrees to comply with all applicable provisions of Federal, State, and local law, regulations, and FTA directives. The terms of the most recent amendment to any Federal, State or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Contract that may be subsequently adopted, are applicable to the Contract to the maximum extent feasible, unless FTA provides otherwise in writing. The Federal or State regulations set forth in this Contract to be observed in the performance of the Contract are subject to change, and such changed requirements will apply to this Contract as required. Contractor shall include in its Subcontracts, and require its Subcontractors of every tier to include in their respective Subcontracts, provisions incorporating the requirements of this Supplementary Conditions Article DBSC10. Contractor's failure to comply with these requirements shall constitute a material breach of this Contract and may, in addition to other remedies, result in the withholding of progress payments to the Contractor.

DBSC10.3 No Federal Government Obligations to Contractor and Third Parties. Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor, or any other third party in connection with the performance of the Contract. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, Contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Contractor.

DBSC10.4 Support for Contract Costs. All costs charged to the Contract shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges. The Contractor shall permit the Government's authorized representatives to inspect all payrolls, records of personnel, invoices of materials and other relevant data and records, and to audit its books, records and accounts.

DBSC10.5 Project Identification. General Conditions Article GC4 is supplemented by adding the following:

DBSC10.5.1 DOT Construction Signs. Signs shall be provided by the Contractor, as directed,

indicating that the project is a Federal Transit Administration Project sponsored by DOT. The signs are specified in Technical Provision Section 20.12, entitled PROJECT IDENTIFICATION SIGNS.

DBSC10.6 Inspection. In addition to the requirements of General Conditions Article GC5.11, the Government shall have access to the site of construction and shall have the right to inspect all Contract Work.

DBSC10.7 False or Fraudulent Statements and Claims. Contractor shall comply with the following requirements:

- A. The requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Remedies," 49 CFR Part 31, apply to Contractor's actions pertaining to the Contract. Accordingly, by signing the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the underlying Contract. If Contractor makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Contractor to the extent the Federal Government deems appropriate.
- B. If Contractor makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 USC § 5307, the Government reserves the right to impose on Contractor the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1), to the extent the Federal Government deems appropriate.

DBSC10.8 Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, Contractor shall comply with the requirements of 49 USC § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

DBSC10.9 Not used.

DBSC10.10 Geographic Restrictions. Contractor shall refrain from using State or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by the District.

DBSC10.11 DOT Labor Requirements. The following DOT provisions shall be applicable to all work under the Contract, in addition to the labor requirements of General Conditions Article GC7. When there is a conflict between these DOT requirements and the Contract Documents, these DOT requirements shall take precedence.

DBSC10.11.1 Davis Bacon Act, as amended. The Contractor shall comply and assures compliance with the requirements of 49 USC Section 5333(a), the Davis-Bacon Act, 40 USC Sections 276a through 276a(7), and implementing U.S. Department of Labor (DOL) regulations,

"Labor Standard Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standard Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. In addition to the other requirements that may apply:

- A. The Contractor shall pay wages to laborers and mechanics performing third party Contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The Contractor shall place a copy of the current prevailing wage determination issued by the U.S. DOL in each solicitation for third party Contract work under the Contract, and agrees to refrain from awarding any affected third party Contract until the third party contractor agrees to the required wage determination.

DBSC10.11.2 Minimum Wages.

- A. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)], the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of 29 CFR Part 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- B. Wherever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- C. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The

Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of the obligations under the plan or program.

- D. The District's Representative will require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract, shall be classified in conformance with the wage determination. The District's Representative will approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. Except with respect to helpers as defined in 29 CFR Part 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 2. The classification is utilized in the area by the construction industry;
 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 4. With respect to helpers as defined in 29 CFR Part 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- E. If the Contractor and the laborers and mechanics to be employed in the classification (if known) or their representatives, and the District's Representative agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the District's Representative to the Administrator of the Wage and Hour Division (Administrator), Employment Standards Administration, U.S. Department of Labor, Washington D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the District's Representative or will notify the District's Representative within the thirty (30) day period that additional time is necessary.
- F. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the District's Representative do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the District's Representative shall refer the questions, including the views of all interested parties and the recommendation of the District's Representative, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the District's Representative or will notify the District's Representative within the thirty (30) day period that additional time is necessary.
- G. The wage rate (including fringe benefits where appropriate) determined pursuant to Supplementary Conditions Articles DBSC10.11.2E and F herein shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- H. Wherever the minimum wage prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide benefit or an hourly cash equivalent thereof.

- I. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of the obligations under the plan or program.

DBSC10.11.3 Withholding. The District's Representative may, under his own authority or writing of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers or mechanics including apprentices, trainees and helpers employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) all or part of the wages required by the Contract, the District's Representative may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

DBSC10.11.4 Payrolls and Basic Records.

- A. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, watchmen and guards working at the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project). Such records shall contain the name, social security number and address of each such worker, his or her correct classification, hourly rates of wages paid [including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof, of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act], daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the U.S. Secretary of Labor has found under 29 CFR Part 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- B. The Contractor shall submit weekly for each week in which Contract work is performed two copies of all payrolls to the District's Representative. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from

the Superintendent of Documents (Federal Stock Number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.

- C. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
1. That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of 29 CFR Part 5 and that such information is correct and complete.
 2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3.
 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- D. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Article.
- E. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 or Section 231 of Title 31 of the United States Code.
- F. The Contractor or Subcontractor shall make the records required under Supplementary Conditions Article DBSC10.11.4A available for inspection, copying, or transcription by authorized representatives of DOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, DOT may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

DBSC10.11.5 Apprentices and Trainees.

- A. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in the first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where

appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the Jobsite in any craft classification shall not be greater than the ratio permitted to the Contractor as to its entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the Jobsite in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- B. Trainees. Except as provided in 29 CFR Part 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for each trainee's level of progress expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work that employee actually performed. In addition, any trainee performing work on the Jobsite in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- C. Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order No. 11246, as amended by Executive Order No. 11375, and 29 CFR Part 30.

DBSC10.11.6 Contract Work Hours and Safety Standards Act, as amended. The Contractor shall comply and assures compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC Sections 327 through 333; and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. In addition to other requirements that may apply:

- A. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC Sections 327 through 332, the Contractor and its Subcontractors of every tier shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The Contractor and its Subcontractors' determinations pertaining to these requirements shall be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contractor Work Hours and Safety Standards Act)," 29 CFR Part 5.
- B. In accordance with Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC Section 333, the Contractor and its Subcontractors shall not require any laborer or mechanic working on a construction contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

DBSC10.11.7 Compliance with Copeland Act Requirements. The Contractor shall comply with the Copeland "Anti-Kickback" Act, 18 USC Section 874 and 40 USC Section 276c, and U.S. DOL regulations, "Contractors and Subcontractors Public Building or Public Work Financed in Whole or Part by Loans or Grants from the United States," 29 CFR Part 3. In addition to other requirements that may apply:

- A. The Contractor shall not induce, by any means, any person employed in the construction completion, or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
- B. The Contractor shall report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its Federal implementing regulations to the District and FTA.

DBSC10.11.8 Contract Termination: Debarment. A breach of the Contract clauses in 29 CFR Part 5.5 may be grounds for termination of the Contract and for debarment as a contractor and a subcontractor as provided in 29 CFR Part 5.12.

DBSC10.11.9 Compliance With Davis-Bacon and Related Act Requirements. All rulings and

interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1, 3 and 5 are incorporated herein by reference.

DBSC10.11.10 Fair Labor Standards. The Contractor shall comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 USC Sections 206 and 207 which apply to employees performing work under the Contract.

DBSC10.11.11 Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the District, the U.S. Department of Labor, or their employees or their representatives.

DBSC10.11.12 Certification of Eligibility. By entering into this Contract, the Contractor certifies that neither it (nor he or she) or any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3A of the Davis-Bacon Act or 29 CFR Part 5.12(a)(1).

- A. No part of this Contract shall be Subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Part 5.12(a)(1).
- B. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC Section 1001.

DBSC10.11.13 Overtime Requirements. No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times that individual's basic rate of pay for all hours worked in excess of forty hours in such workweek.

DBSC10.11.14 Violation: Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in Paragraph (b)(1) of 29 CFR Part 5.5, the Contractor and any Subcontractor responsible therefor shall be liable to any affected employee for unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in Paragraph (b)(1) of 29 CFR Part 5.5, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Paragraph (b)(1) of 29 CFR Part 5.5.

DBSC10.11.15 Withholding for Unpaid Wages and Liquidated Damages. DOT or the District shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be

determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph (b)(2) of 29 CFR Part 5.5.

DBSC10.11.16 Notice to the District of Labor Disputes. Whenever the Contractor has acknowledged that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the District's Representative.

DBSC10.12 Subcontracts. A Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in Supplementary Conditions Articles DBSC10.11.1 through DBSC10.11.16 and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in Supplementary Conditions Articles DBSC10.11.1 through DBSC10.11.16.

DBSC10.13 How Contract Affected by Provisions Held Invalid. If any provision of this Contract is held invalid, the remainder of this Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

DBSC10.14 Reporting, Record Retention and Access. Contractor shall comply with the following requirements:

- A. **Record Retention.** Contractor shall, during the course of the Contract and three years after final payment, maintain intact and readily accessible all data, documents, reports, records, Contracts, and supporting materials relating to the Contract as the District may require.
- B. **Access to Records.** Contractor shall permit the District, the Secretary of Transportation, and the Comptroller General of the United States or their authorized representatives, to inspect all Contract work, materials, payrolls, and other data, and to audit the books, records and accounts of Contractor and its Subcontractors pertaining to the Contract. In accordance with 49 USC § 5325(a), Contractor shall require each Subcontractor to permit the District, the Secretary of Transportation and Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that Subcontract and to audit the books, records, and accounts involving that Subcontract as it affects the Contract.

DBSC10.15 Debarment and Suspension. Contractor shall comply with the following requirements:

- A. Contractor shall comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note; and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29.
- B. Contractor shall refrain from entering into any Subcontract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) list of Parties

Excluded from Federal Procurement or Nonprocurement Programs,” implementing Executive Orders Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for Contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.

- C. Before entering into any Subcontract, Contractor shall obtain a debarment and suspension certification from each prospective Subcontractor containing information about the debarment and suspension status and other specific information about the Subcontractor and its "principals," as defined at 49 USC § 29.105(p). An example of the appropriate certification is contained in 49 CFR Part 29, Appendix A.
- D. Contractor shall require each Subcontractor to refrain from awarding any Subcontract of any amount (at any tier) to a debarred or suspended Subcontractor, and to obtain a similar certification from any Subcontractor (at any tier) seeking a Subcontract exceeding \$100,000. An example of the appropriate certification is contained in 49 CFR Part 29, Appendix B.

DBSC10.16 Buy America. Contractor shall comply with 49 USC § 5323(j), FTA's Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by FTA.

DBSC10.17 Fly America. Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Article in all Subcontracts that may involve international air transportation.

DBSC10.18 Environmental Protection. Contractor shall comply with the following requirements:

- A. Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note; FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.
- B. Contractor shall report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or Subcontractor to FTA and the appropriate U.S. Environmental Protection Agency (EPA) Regional Office.

DBSC10.19 Air Quality. Contractor shall comply with the following requirements:

- A. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 et seq. Specifically:
 - 1. Contractor shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act," 40 CFR Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93.
- B. Contractor shall report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or Subcontractor to FTA and the appropriate U.S. EPA Regional Office.

DBSC10.20 Clean Water. Contractor shall comply with the following requirements:

- A. Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 et seq.
- B. Contractor shall report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of any Subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.

DBSC10.21 Disadvantaged Business Enterprise. Contractor shall take the following measures to facilitate participation by disadvantaged business enterprises (DBEs) in the Contract:

- A. Contractor shall comply with current U.S. DOT regulations on DBE participation in U.S. DOT financial assistance programs, at 49 CFR Part 26. Contractor shall take all necessary and reasonable steps required by U.S. DOT regulations to ensure that eligible DBEs have an equal opportunity to compete for and participate in Subcontracts financed with Federal assistance awarded by U.S. DOT.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Subcontract financed with Federal assistance derived from the U.S. DOT.
- C. Contractor must promptly pay Subcontractors for satisfactory performance of their Subcontracts.

DBSC10.22 Cargo Preference - Use of United States Flag Vessels. Contractor shall comply with U.S. Maritime Administration regulations, "Cargo Preference - U.S. Flag Vessels," 46 CFR Part 381 to the extent those regulations apply to this Contract. Contractor shall include the clauses required by those regulations, modified as necessary to identify the affected parties in each Subcontract or subagreement involving equipment, materials, or commodities suitable for transport

by ocean vessel.

DBSC10.23 Patent Rights. If any invention, improvement or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Contract, which invention, improvement or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor shall notify the District and the Government (FTA) immediately and provide a detailed report and shall require its Subcontractors to notify the District and the Government immediately and provide a detailed report. The rights and responsibilities of the District, the Contractor, and the Government with respect to such invention, improvement or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waivers thereof. Unless the Government later makes a contrary determination in writing, the Contractor and its Subcontractors of any tier shall transmit to the FTA those rights due the Government in any invention resulting from this Contract and as further described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 CFR Part 401.

DBSC10.24 Rights in Data and Copyrights.

- A. The term "subject data" used in this Article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings, or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project Administration.
- B. Federal Restrictions: The following restrictions apply to all subject data first produced in the performance of this Contract:
 - 1. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public.
- C. Federal Rights in Data and Copyrights: In accordance with 49 CFR Part 18.34 and 49 CFR Part 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - 1. Any subject data developed under the grant, or under cooperative agreement, or under a third party Contract or Subcontract, irrespective of whether or not a copyright has been obtained; and
 - 2. Any rights of copyright to which Contractor purchases ownership with Federal

assistance.

- D. Special Federal Rights for Planning, Research and Development Projects: Contractor understands and agrees that, in addition to the rights set forth in Supplemental Conditions Article DBSC10.24C herein, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party Subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject data first produced under this Contract. In the event that the Contract is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined in Supplementary Conditions Article DBSC10.24A herein and shall be delivered as the District or Government may direct. This Supplementary Conditions Article DBSC10.24D however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use.
- E. Hold Harmless: Unless prohibited by State law, the Contractor agrees to indemnify, save and hold harmless the District, the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify the Government for any such liability arising out of the wrongful acts of employees or agents of the Government.
- F. Restriction on Access to Patent Rights: Nothing contained in this Supplementary Conditions Article DBSC10.24 on rights in data shall imply a license to Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- G. Application to Material Incorporated into the Contract: The requirements of Supplementary Conditions Articles DBSC10.24B, C, and D herein do not apply to material furnished to the Contractor by the Government and incorporated in the Work carried out under the Contract; provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

DBSC10.25 Certification Regarding Lobbying. This Contract is subject to the requirements of U.S. DOT Regulations "New Restrictions on Lobbying" 49 CFR Part 20, as modified by 31 USC Section 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 and the terms of 61 CFR Part 1412. Contractor shall require that the "Certification Regarding Lobbying" set out in Appendix A to those Regulations and in the Proposal Form be executed by its Subcontractors or sub-suppliers of any tier receiving an amount in excess of \$100,000 under this Contract and shall require such Subcontractors and sub-suppliers to forward such certifications to Contractor, and Contractor shall forward such certifications and any disclosure forms to the District. Contractor and each Subcontractor of any tier certifies that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 USC Section 1352. Contractor and Subcontractors shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC Section 1352. Such disclosures shall be forwarded from tier to tier to the

District.

DBSC10.26 Energy Conservation. The Contractor and its Subcontractors shall comply with mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC Section 6321 et seq.

DBSC10.27 Americans with Disabilities Act. The Contractor and any of its Subcontractors under this Contract agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and the following regulations and any amendments thereto:

- A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- B. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- C. U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- I. U.S. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
- J. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
- K. Any implementing requirements FTA may issue.

DBSC10.28 Preference for Recycled Products. To the extent practicable and economically feasible, Contractor shall use recycled products pursuant to U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 CFR Parts 247-253, which implement Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962.

DBSC10.29 Equal Employment Opportunity. It has been and is the policy and goal of the District to build and maintain a staff representative of all the residents of its service area, including minority, female and disadvantaged persons, and to continue to ensure that all applicants shall be employed, and all employees shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Further, it is the policy of the District to actively pursue a program of providing equal employment opportunity under its construction contracts as well as its own employment practices. Accordingly, Contractor shall comply with the following equal employment opportunity (EEO) requirements:

- A. **General Requirements.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall also comply with any implementing requirements FTA may issue.

DBSC10.30 Civil Rights. Contractor shall comply with the following requirements:

- A. **Compliance with Regulations.** Contractor shall comply and assure compliance by its Subcontractors of any tier with all of the requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 USC § 2000d, 49 USC § 5332, and with the Regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter called "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
- B. Contractor shall comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq. (which implements Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC Section 2000(e)note, and any Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction performed in the course of the Contract.
 - 1. Neither provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligation under these Specifications, Executive Order No. 11246, as amended by Executive Order No. 11375, or the regulations promulgated pursuant thereto.
 - 2. The Contractor shall carry out sanctions and penalties for violation of these

Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended by Executive Order No. 11375, and its implementing regulations, by the U.S. Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order No. 11246, as amended by Executive Order No. 11375.

- C. Nondiscrimination. Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part 21.5, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- D. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive Proposal or negotiation made by Contractor for work to be performed under a Subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
- E. Information and Reports. Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the District or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the District, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- F. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the District shall impose such Contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to Contractor under the Contract until Contractor complies, and/or
 - 2. Cancellation, termination or suspension of the Contract, in whole or in part.
- G. Incorporation of Provisions. Contractor shall include the provisions of Supplementary Conditions Articles DBSC10.30A through G in every Subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any Subcontract or procurement as the District or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as result of such direction, Contractor may request the District to enter into such litigation to protect the interests of the District and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

DBSC10.31 Seismic Safety. Contractor shall comply with the requirements of U.S. DOT regulations applicable to seismic safety requirements for U.S. DOT assisted construction projects at 49 CFR Part 41 (specifically, 49 CFR Part 41.117), and any implementing guidance FTA may issue, to the acquisition or construction of any new building and to additions to any existing building.

DBSC10.32 Metric System. To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement in its Contract, as may be required by 15 USC §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 USC § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, Contractor shall accept products and services with dimensions expressed in the metric system of measurement.

DBSC10.33 Privacy.

- A. Contractor shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.
- B. Contractor shall also include these requirements in each Subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

END OF ARTICLE DBSC10